Petition

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IN THE SUPREME COURT OF THE UNITED STATES

TERM

NO.

GILBERT R. STAINBROOK, JR., PETITIONER

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF PENNSYLVANIA

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the U.S.:

Gilbert R. Stainbrook, Jr., the petitioner herein, prays that a writ of certiorari issue to review the judgement of the Supreme Court of Pennsylvania entered in the above-entitled case on May 14, 1981.

QUESTIONS PRESENTED

1. Was petitioner deprived of his property without due process of law, in violation of the United States Constitution, when his certificate of appointment for a motor vehicle inspection station was suspended for three years without re-appointment privileges, without a showing by the Commonwealth

that petitioner had knowledge of, had authorized or had consented to the violations with which he was charged?

2. Was petitioner deprived of his property without due process of law in violation of the United States Constitution when the Court of Common Pleas of Washington County, the Commonwealth Court of Pennsylvania, and the Pennsylvania Supreme Court arbitrarily and capriciously disregarded petitioner's unrebutted testimony that he had no knowledge of, did not consent to, and did not authorize any of the allegedly faulty inspections performed by his employees?

OPINIONS BELOW

The decision of the Supreme Court of Pennsylvania, whose judgement is herein sought to be reviewed, was rendered on May 14, 1981, without opinion. The decision was unreported.

The opinion and order of the Commonwealth Court of Pennsylvania in this matter, dated

February 12, 1981 is reported at _____ Pa. Cmwlth. _____, 426 A.2d 177 (1981), a copy of which is located at pages 1a - 5a of the appendix.

The unreported opinion and order of the Court of Common Pleas of Washington County, Pennsylvania, dated March 21, 1977, is located at pages 5a-12a of the appendix.

JURISDICTION

On May 14, 1981, the Supreme Court of Pennsylvania denied petitioner's Petition for Allowance of Appeal. Jurisdiction to review said judgement is invested in the Supreme Court of the United States by virtue of 28 U.S.C. §2101(c).

CONSTITUTIONAL PROVISION RELIED UPON

"... nor shall any State deprive any person of life, liberty or property, without due process of law..." Section 1, Amendment XIV, United States Constitution.

STATE STATUTE INVOLVED

The Vehicle Code, Act of April 29, 1959 P.L. No. 58, as Amended: 75 Purdons Statutes §819(b), found at page 12a - 14a of the appendix.

STATEMENT OF THE CASE

Petitioner is the holder of a certificate of appointment for an official inspection station in Washington County, Pennsylvania. In 1974 petitioner's son allegedly performed 2 faulty inspections. On June 27, 1975, petitioner's certificate of appointment was suspended by the Department of Transportation, Bureau of Traffic Safety, for 3 years without re-appointment privileges. Petitioner appealed the suspension to the Court of Common Pleas of Washington County. After a hearing on November 7, 1975 the Honorable George K. Hanna dismissed the appeal. Petitioner then filed a timely appeal to the Commonwealth Court of Pennsylvania. Since Judge Hanna retired without filing an opinion the Commonwealth Court remanded the case to the court below for a hearing de novo.

The Honorable John F. Bell conducted a hearing on December 20, 1976, and dismissed the appeal. Petitioner filed a timely appeal from Judge Bell's Order. As stated previously the Commonwealth Court, per Judge Theodore Rogers, affirmed the lower court.

Petitioner's due process argument was made in his brief while the case was on appeal in the Commonwealth Court of Pennsylvania. The argument was rejected by that court. (See appendix, page 4a).

REASONS FOR GRANTING WRIT

Although petitioner presented unrebutted testimony that he had no knowledge of, did not authorize or consent to any violations of the Vehicle Code, the state courts in Pennsylvania arbitrarily and capriciously ignored this fact in affirming the action of the Department of Transportation. Petitioner is not arguing that the trial court is not permitted to attach any weight it desires to the testimony of any witness.

Without question, that is the province of the trier of fact. However it is clear from the trial court's opinion that the trial court felt that petitioner had not offered "any testimony or evidence as to his lack of authorization, knowledge or consent." Opinion of lower court, appendix, page 9a-10a. The Commonwealth Court likewise ignored petitioner's testimony on this issue, even after acknowledging said testimony. (Opinion of Commonwealth Court, appendix, page 3a).

Thus, petitioner has been stripped of his livlihood without any showing of wrongdoing on his part.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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OPINION

ROGERS, Judge

The appellant, Gilbert R. Stainbrook, Jr., (hereinafter referred to as "Father"), is the holder of a certificate of appointment for an official inspection station, Gil Stainbrook's Auto Repair. In 1974 the appellant's son, Gilbert R. Stainbrook, III. (hereinafter referred to as "Son"), a certified machanic performed 2 faulty inspections. On June 27, 1975 the father's certificate of appointment was suspended by the Department of Transportation, Bureau of Traffic Safety (Department), for three (3) years without re-appointment privileges for inter alia, permitting a mechanic to perform faulty inspections. Section 819(e) and (h) and 834 of the Vehicle Code, Act of April 29, 1959, P.L. 58 as Amended, formerly 75 P.S. §§819(e) and (h), 834. The 1959 Vehicle Code was repealed by the Act of June 17, 1976, P.L. 162 and supplanted by the new Vehicle Code at 75 Pa. C.S. §101 et seq.

Inspection station provisions of the new code are at 75 Pa. C.S. §4721 et seq.

The father appealed the suspension to the Court of Common Pleas of Washington County. After a hearing on November 7, 1975, the Honorable George K. Hanna dismissed the appeal and this action was appealed to this court. Judge Hanna retired without filing an opinion and we remanded the matter to the court below for a hearing de novo. The Honorable John F. Bell conducted a hearing on December 20, 1976 and dismissed the appeal. This appeal followed.

The appellant argues that his case comes within a provision of section 819(b) of the old Vehicle Code (not in the new code) that faulty inspections made by an employee without the knowledge, authorization or consent of the employer, may not be the occassion for a suspension. Under this provision, the employer had the burden of showing lack of knowledge, authorization or consent. Commonwealth vs. Marini, 25 Pa. Cmwlth. 207, 360 A.2d 163 (1976).

The father asserted that he had no knowledge of, or did not authorize or consent to faulty inspections. At the November 7, 1975 hearing before Judge Hanna, he testified that he had no knowledge of, and did not authorize or consent to any violations. At the December 20, 1976 hearing before Judge Bell and the Commonwealth's and the appellant's lawyers, before any evidence was received, engaged in an extensive colloquy concerning how much of the record earlier made could be the subject of stiputation. It was agreed that faulty inspections by the appellant's son could be stipulated. However, the factual issue of whether the father had knowledge of or authorized or consented to the faulty inspection was expressly not stipulated and was left for Judge Bell's determination. At the hearing, which then ensued the appellant, whether through oversight or for some other reason adduced no evidence on the subject of his lack of knowledge, authorization or consent to the faulty inspections. Judge Bell dismissed the appeal because the appellant "did not offer any testimony or evidence as to

lack of authorization, knowledge or consent."

The notes of testimony of the hearing before Judge Hanna were sent with the record to this court. The appellant contends that Judge Bell was wrong in asserting that there was no evidence produced of lack of knowledge, authorization or consent because he testified to such at the hearing before Judge Hanna. We disagree. The hearing before Judge Bell was, on our direction, to be de novo. The notes of testimony of the December 7, 1975 hearing were not offered into evidence at the November 20, 1976 hearing and only the fact of the son's faulty inspections was stipulated.

The appellant's contention that he was denied due process because Judge Bell's findings were based on a determination of the credibility of witnesses at the first hearing, whom he never observed testify, is factually (as well as legally) without merit. Judge Bell's findings were based only on the record made at the hearing he conducted. ORDER AFFIRMED.

ORDER

AND NOW this 12th day of February, 1981, we affirm the order of the Court of Common Pleas of Washington County and order the reinstatement of the Department's suspension of Gil Stainbrook's Auto Repair certificate of appointment.

OPINION AND ORDER

BELL, Judge

Appellant, Gilbert R. Stainbrook, Jr., proprietor of "Gil Stainbrook's Auto Repair" located in Washington County, Pennsylvania, has appealed from the order of the Secretary of Transportation as promulgated by the Director of the Bureau of Traffic Safety, suspending him for a period of three years without re-appointment privileges, the certificate of appointment, Certificate No. O.I.S. 4527 permitting him to operate an official inspection station.

The suspension was imposed under the authority of Sections 819(e) and (h) and Section

834 of the Motor Vehicle Code for the performance of "faulty inspections"; permitting an unauthorized mechanic to perform inspections; improper keeping of records. Act of April 29, 1959, P.L. as amended, 75 P.S. Section 819(e) and (h) and Section 834.

After a hearing de novo, the Court makes the following:

FINDINGS OF FACT

1. Appellant, Gilbert R. Stainbrook, Jr., proprietor of "Gil Stainbrook Auto Repair" of Washington, Pennsylvania, was awarded an presently holds, subject to suspension, a certificate of appointment, being Certificate No. O.I.S. 4527 issued by the Secretary of Transportation.

2. On March 2, 1974, a Buick automobile was inspected by Gil Stainbrook, III. employee and son of appellant, who was an approved and certified inspection mechanic. The automobile was approved as conforming to the Official Inspection Station Instruction Manual as pro-

mulgated by the Secretary of Transportation and an inspection sticker issued. Subsequently, upon investigation by the Pennsylvania State Police it was found that certain items on the vehicle were not completed and a faulty inspection had been performed. A summary action was brought against Gil Stainbrook, III, he was found guilty before a magistrate and paid a fine.

3. On March 11, 1975, an automobile owned by William Brown was inspected by Herbert Nichols, an employee of appellant, but not an approved, certified or licensed mechanic as required by the Official Inspection Station Instruction Manual. Mr. Nichols has previously been licensed and certified and was subsequently licensed and certified following this incident. A faulty inspection was performed on the vehicle.

4. The appellant permitted an unauthorized mechanic (Herbert Nichols) who was not certified or licensed, to inspect vehicles.

DISCUSSION

Section 819(b) of the Motor Vehicle Code provides as follows:

> "If the Secretary finds that the provisions of this act are not being complied with, or that the business of an official inspection station in connection with the corrections, adjustments, repairs or inspection of motor vehicles ... is being improperly conducted, he shall suspend the cerificate of appointment of any such station... Provided, however, That if the servant or employe [Sic] of any such inspection station shall without the authorization knowledge or consent of his employer, violate any of the provisions of this act in reference to the inspection of vehicles such violation or violations shall not be the cause of the suspension of the certificate of appointment..."

The facts in the matter before the Court are not dispute. The parties agreed and stipulated at the hearing that appellant's employee. Gil

Stainbrook, III, performed faulty inspections on two motor vehicles and was found guilty on summary charges before a magistrate and paid a fine.

It is appellant's contention, however, that the Commonwealth did not prove that the wrongful actions of appellant's employee in performing the faulty inspection were done with appellant's authorization, knowledge or consent.

The Court does not agree with this proposition, for once a violation of the Motor Vehicle Code has been proved by the Commonwealth against an operator of an official inspection station, then the operator must come forward and bring himself within the statutory exception that there cannot be a suspension if the employee's conduct, which is the basis for the violation of the Code, was without the authorization, knowledge or consent of the operator. In the instant case, appellant did not meet his burden for he did not offer any testimony or evidence as to his lack of authorization, knowledge or

consent, which would bring himself within the exception provided by Section 819(b). See Commonwealth vs. Harris and Son, 403 Pa. 598, 170 A.2d 591 (1961).

As to the issue of an unauthorized mechanic performing inspections, we find the Official Inspection Station Instruction Manuel (Commonwealth Exhibit 1) as promulgated by the Secretary of Transportation, the following:

> "Before anyone can perform official inspections, they must be examined and qualified by the Pennsylvania State Police Inspection Station Supervisor. The Station owner or operator must have in his possession an official form TS-403, approved by the Department of Transportation, for each approved inspection mechanic before he can permit the person to conduct inspections for his inspection station." Official Inspection Station Instruction Manuel, Chapter 2, 2.1(b).
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> "The use of an unapproved person for

inspecting or approving any vehicle is sufficient cause for immediate suspension of the certificate of appointment of that official inspection station." Official Inspection Station Instruction Manuel Chapter 2, 2.1(f).

Again, there is no dispute to the fact that Herbert Nichols, employee of appellant, was not approved, licensed, or a certified mechanic authorized to perform official inspections on March 11, 1975, the date he performed a faulty inspection on an automobile owned by William Brown.

Section 834(f) of the Motor Vehicle Code provides as follows:

"If the Secretary finds that the provisions of this act, or the direction of the secretary are not being complied with, or that the business of such station in connection with such inspection is being improperly conducted, he may suspend the designation of any such station."

ORDER

AND NOW, this 21st day of March, 1977 the appeal of Gilbert R. Stainbrook, Jr., from suspension of certificate of appointment for motor vehicle inspection is dismissed.

/s/ John F. Bell, J.
John F. Bell, Judge

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75 Pa. C.S.A.

§819. Official Inspection Stations

(b) If the Secretary finds that the provisions of this act are not being complied with, or that the business of an official inspection station in connection with the corrections, adjustments, repairs or inspection of motor vehicles, trailers or semi-trailers is being improperly conducted, he shall suspend the certificate of appointment of any such station and require the immediate surrender and return

of the certificate of appointment together with all department forms: Provided however, that if the servant or employee of any such inspection station shall without the authorization, knowledge or consent of his employer, violate any of the provisions of this act in reference to the inspection of vehicles, such violation or violations shall not be the cause of suspension of the certificate of appointment, as herein provided, but such employee shall be subject to prosecution as hereinafter provided. Any person whose certificate of appointment is suspended under the provisions of this subsection may, within forty-Five (45) days of the date thereof, appeal to the court of common pleas of the county wherein such official inspection station is located, and such court is hereby vested with jurisdiction, and it shall be its duty to set the matter down for hearing upon forty-five (45) days' written notice to the secretary, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is subject to suspension of his certificate of appointment

under the provisions of this act. Any party aggreived by a decision of a court of common pleas shall have the right of appeal to the Commonwealth Court.

Reenacted and amended 1973, Nov.28,P.L. 368, No. 130, §1.